

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Count's Kustoms, LLC,

Plaintiff

v.

Joseph Frontiera, et al.,

Defendants

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ALL RELATED ACTIONS

2:16-cv-00910-JAD-GWF

**Order Re: Motion-to-Dismiss  
Briefing**

[ECF Nos. 25, 37]

When defendant Joseph Frontiera filed his motion to dismiss<sup>1</sup> eight minutes after the stipulated deadline expired, plaintiff Count's Kustoms, LLC moved to strike it as untimely.<sup>2</sup> Frontiera asks the court to excuse the motion's untimeliness and consider the motion on its merits.<sup>3</sup> I find both motions suitable for disposition without oral argument.<sup>4</sup>

**A. Motion to Strike**

Plaintiff cites Federal Rule of Civil Procedure 12(f)(2) as the authoritative basis for its request to strike Frontiera's late motion to dismiss. Rule 12(f) authorizes the court to strike matters *from pleadings*.<sup>5</sup> Rule 7 identifies the civil filings that qualify as pleadings;<sup>6</sup> a motion to

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<sup>1</sup> ECF No. 18.

<sup>2</sup> ECF No. 25.

<sup>3</sup> ECF No. 37.

<sup>4</sup> L.R. 78-1.

<sup>5</sup> Fed. R. Civ. P. 12(f).

<sup>6</sup> Fed. R. Civ. P. 7(a)(1)–(7).

dismiss is not among them, so Rule 12(f) has no application here.<sup>7</sup> The motion to strike (ECF No. 25) is denied.

**B. Motion for Leave**

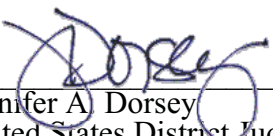
Frontiera moves the court to accept his late-filed motion based on a showing of excusable neglect. Counsel explains that the motion was served on all counsel minutes before the deadline, but the filing did not ultimately go through until eight minutes after midnight on the following day.<sup>8</sup> Because the motion was timely served on the parties, and the filing delay was mere minutes long, I find excusable neglect and good cause exists. Accordingly, I grant Frontiera's motion (ECF No. 37) and deem his motion to dismiss (ECF No. 18) timely.

**Conclusion**

Accordingly, IT IS HEREBY ORDERED that

- Plaintiff's Motion to Strike Defendant Frontiera's Motion to Dismiss As Untimely [ECF No. 25] is **DENIED**;
- Defendant Frontiera's Motion for Leave for this Court to Accept Late Filing of Motion to Dismiss [ECF No. 37] is **GRANTED**. Frontiera's Motion to Dismiss [ECF No. 18] will be considered as a timely motion.

DATED: June 20, 2016

  
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 Jennifer A. Dorsey  
 United States District Judge

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<sup>7</sup> *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983) ("Under the express language of the rule, only pleadings are subject to motions to strike.").

<sup>8</sup> ECF Nos. 37 at 3; 37-1 at 3.